

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 07-0577**  
**Sales and Use Tax**  
**For Tax Years 2004-05**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**I. Sales and Use Tax—Best Information Available.**

**Authority:** IC § 6-2.5-8-8; IC § 6-8.1-5-1.

Taxpayer protests the assessment of sales and use tax.

**STATEMENT OF FACTS**

Taxpayer operated a motel in Indiana until September 6, 2005. As the result of an audit, the Indiana Department of Revenue ("Department") issued proposed assessments for sales and use tax for tax years 2004 and 2005. Taxpayer had moved to New Orleans, Louisiana in mid-2005, and had taken its records to the new location. As a result of Hurricane Katrina, most of Taxpayer's records were lost. The Department used the best information available to arrive at the amounts it assessed against Taxpayer. Taxpayer protests that these numbers are too high and that lower numbers are more appropriate. Further facts will be supplied as required.

**I. Sales and Use Tax—Best Information Available.**

**DISCUSSION**

Taxpayer protests the amount of sales and use tax imposed by the Department for the tax years 2004 and 2005. Taxpayer believes that the amounts listed in the audit report as subject to sales tax and use tax are too high. The burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

The Department based its calculations of those amounts on the best information available to it, as provided by IC § 6-8.1-5-1(b), which states:

If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the

amount of the unpaid tax on the basis of the best information available to the department. The amount of the assessment is considered a tax payment not made by the due date and is subject to IC 6-8.1-10 concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail.

Taxpayer protests that several items listed on the audit report as subject to sales or use tax were either used for exempt purposes or had sales tax paid at the time of purchase. Also, Taxpayer protests that two guests who rented rooms in the motel provided exemption certificates, thereby relieving Taxpayer of the requirement to collect sales tax on the rental of the rooms, as provided by IC § 6-2.5-8-8(a), which states:

A person, authorized under subsection (b), who makes a purchase in a transaction which is exempt from the state gross retail and use taxes, may issue an exemption certificate to the seller instead of paying the tax. *The person shall issue the certificate on forms and in the manner prescribed by the department.* A seller accepting a proper exemption certificate under this section has no duty to collect or remit the state gross retail or use tax on that purchase. *(Emphasis added.)*

As previously stated, Taxpayer lost almost all of its records, including copies of exemption certificates, after it moved to New Orleans and was flooded out by Hurricane Katrina. While the Department understands the difficulties this situation imposes on Taxpayer, there are no provisions in the statutes which allow the Department to alter its proposed assessments without any supporting documentation.

As provided by IC § 6-8.1-5-1(b), the Department based its proposed assessments on the best information available to it. IC § 6-8.1-5-1(c) places the burden of proving a proposed assessment wrong on Taxpayer. Here, Taxpayer is unable to prove the proposed assessments wrong.

### **FINDING**

Taxpayer's protest is denied.

WL/LS/DK December 5, 2007.